

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 16047 of David and Emily Clodfelter pursuant to 11 DCMR 3108.1, for a special exception under Section 726 and 1906.1 to allow modernization of a gasoline service station in a C-2-A/C-2-B/ARTS District at premises 1448 U Street, N.W. (Square 205, Lot 66)

Hearing Date: May 17, 1995  
Decision Date: May 17, 1995 (Bench Decision)

Disposition: The Board GRANTED the application by a vote of 4-0 (Susan Morgan Hinton, Craig Ellis, Laura M. Richards and William L. Ensign to grant; Angel F. Clarens not present, not voting)

FINAL DATE OF ORDER: October 11, 1996

ORDER DENYING WAIVER TO FILE MOTION FOR RECONSIDERATION

The Board granted the application by its order dated October 11, 1996. By letter dated November 26, 1996, Mr. Tom Coumaris, an opponent to the application, requested that the Board waive Subsection 3332.2 of its Rules, requiring motions for reconsideration or rehearing of final decisions to be filed by a party within ten (10) days of the filing and service of the written order.

A waiver of Subsection 3332.2 would allow for the filing of a motion for reconsideration or rehearing on November 4, 1996 from Mr. Coumaris, three other parties and three interested persons.

By memorandum dated November 20, 1996, Mr. Coumaris maintains that he did not receive a copy of the final order, and to his knowledge, only one party in opposition to the application received a copy. He stated that he picked up a copy of the order from the Office of Zoning on October 25, 1996. He was told by staff that he had 15 days from receipt of order to request reconsideration. Mr. Coumaris filed the request for reconsideration on November 4, 1996. He maintains that the reconsideration request is late due to the lack of notice of the final order.

By letter dated November 15, 1996, the applicant, through counsel, requested that the Board deny the reconsideration request because it was filed in an untimely fashion. The applicant stated that the request should have been filed on October 23, 1996 to be considered timely. Instead the request was filed on or about November 5, 1996.

The applicant argued that the Board's rule regarding the timely filing of such requests should be enforced unless there is a compelling reason or explanation for untimeliness. The rule is intended to provide for certainty and finality in BZA decision making. After waiting for almost a year and a half for the written order in the case, the applicants have been proceeding as quickly as possible to prepare their building permit application so that they may begin project construction. It was argued that further delays and uncertainty are unwarranted and detrimental to the applicant.

No other persons or parties submitted statements related to the waiver requests.

Upon consideration of the waiver request, the applicant's response and the record in the case, the Board finds that at the hearing on May 17, 1995, Mr. Coumaris appeared on behalf of Advisory Neighborhood Commission 1B. On October 11, 1996, the final order was sent by certified mail to six persons, one of whom was the chairperson of ANC 1B, Mary Treadwell. The Board finds that all six of the return receipts were received by the Office of Zoning indicating that all of the orders were received by their addressees. The Board notes that while Mr. Coumaris was the ANC representative at the hearing, he was not the chairperson of the ANC at the time of the hearing or when the order was issued. The final order was sent to the ANC as a party to the case, not to Mr. Coumaris in his individual capacity.

Finally, the Board notes that the final order was also sent to Kathryn Eckles, Judith Bauer and Lou Heller, three of the seven signatories on the reconsideration request. A review of the transcript reveals that these persons testified at the hearing while the remaining three signatories - Peter Brehm, J. Perkins and Anne Sellin - did not. Because the latter three did not participate in the hearing, they were not entitled to receive a copy of the order as a matter of course. Only parties are entitled to receive a copy of the Board's final order.

In light of the foregoing, the Board concludes that the mailing was proper and it is hereby **ORDERED** that a waiver of the ten-day period to file a motion for reconsideration or rehearing is **DENIED**.

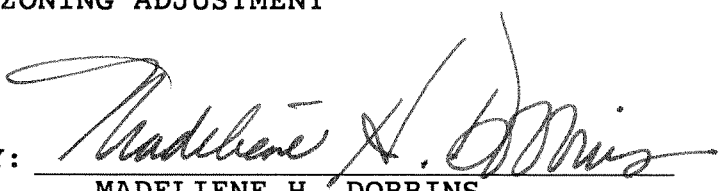
**VOTE:** 3-0 (Susan Morgan Hinton, William L. Ensign, Laura M. Richards, to deny; Angel F. Clarens and Sheila Cross Reid not voting, not having heard the case).

**DECISION DATE:** December 4, 1996

THIS ORDER WAS ISSUED AS A PROPOSED ORDER PURSUANT TO THE PROVISIONS OF D.C. CODE SECTION 1-1509(d). THE PROPOSED ORDER WAS SENT TO ALL PARTIES ON MAY 15, 1997. THE FILING DEADLINE FOR EXCEPTIONS AND ARGUMENTS WAS JUNE 16, 1997. NO PARTY TO THIS APPLICATION FILED EXCEPTIONS OR ARGUMENTS RELATING TO THE PROPOSED ORDER, THEREFORE, THE BOARD OF ZONING ADJUSTMENT ADOPTS AND ISSUES THIS ORDER AS ITS FINAL ORDER IN THIS CASE.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
MADELIENE H. DOBBINS  
Director

FINAL DATE OF ORDER: \_\_\_\_\_

JUL 8 1997

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN THAT PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16047


As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUL 8 1997 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Cynthia A. Giordano, Esquire  
Arter and Hadden  
1801 K Street, N.W., Suite 400K  
Washington, D.C. 20006-1301

Carlos Horcasitas  
14811 Plainfield Lane  
Darnestown, Maryland 20874

Kathryn T. Eckles  
Residential Action Coalition  
1524 T Street, N.W.  
Washington, D.C. 20009

Mary Treadwell, Chairperson  
Advisory Neighborhood Commission 1B  
P.O. Box 73710  
Washington, D.C. 20056-3710

  
MADELIENE H. DOBBINS  
Director

Date: JUL 8 1997